

Note: Since the breakdown of the payments between the two sources of contributions is already done by the U.S. government before payments commence, the computation of the includable amount may readily be made using this information.

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## CORPORATION FRANCHISE OR INCOME TAXES

### 1. Payroll Factor: Contributions to Section 401(k) Plans

Statutes: Section 71.25(8), Wis. Stats. (1987-88)

Wis. Adm. Code: Section Tax 2.39(4), January 1978 Register

Note: This Tax Release supersedes the Tax Release titled "Payroll Factor - Section 401(k) Earnings" which appeared in *Wisconsin Tax Bulletin* 49, page 12.

Background: Section 71.25(8), Wis. Stats. (1987-88), provides in part that the payroll factor of the standard 3-factor Wisconsin apportionment formula includes the total compensation paid during the taxable year. Section Tax 2.39(4), Wis. Adm. Code, defines the term "compensation" to include wages, salaries, commissions, and any other form of remuneration paid to employees for personal services rendered.

A qualified cash or deferred arrangement under section 401(k) of the Internal Revenue Code (IRC) is any arrangement which is part of a profit-sharing or stock bonus plan which meets the requirements of section 401(a), IRC. Under such a plan, a covered employee may elect to have the employer make payments as contributions to a trust on behalf of the employee, or to the employee directly in cash. The payments to the trust are excluded from the taxable income of the employee until the employee actually receives distributions from the trust. A plan may also provide for an employer to make matching contributions to the trust.

Question 1: Are wages contributed to a qualified cash or deferred arrangement under section 401(k), IRC, on behalf of employees who have elected to participate in such a plan, included in the computation of the payroll factor?

Answer 1: Yes. Such wages are included in the payroll factor computation under sec. 71.25(8), Wis. Stats. (1987-88), and section Tax 2.39(4), Wis. Adm. Code, in the period in which they are earned. An employee's election to defer from taxation until a later time a portion of his or her salary does not also defer inclusion of these wages in the payroll factor computation until that later date.

Question 2: Are matching contributions to the trust by an employer under section 401(k), IRC, included in the computation of the payroll factor?

Answer 2: No. Since the employees do not have a right to receive such contributions directly in cash, the contributions do not constitute compensation for purposes of the payroll factor computation.

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## SALES/USE TAXES

### 1. Coin-Operated Laundry Machines

Statutes: Section 77.52(2)(a)6, Wis. Stats. (1987-88)

Facts and Question: Section 77.52(2)(a)6, Wis. Stats. (1987-88), provides that Wisconsin sales tax is imposed on laundry services, except when the service is performed by the customer through the use of coin-operated, self service machines.

Is laundry service performed by a customer through the use of a washer or dryer activated by tokens or magnetic cards exempt from Wisconsin sales tax?

Answer: No. A washer or dryer activated by tokens or magnetic cards is not considered a "coin-operated" machine. Therefore, the exemption does not apply.

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### 2. Exemption for Heavy Logging Equipment

Statutes: Sections 77.51(4)(c)4, 77.52(2)(a)10, and 77.54(39), Wis. Stats. (1987-88)

Background: Section 77.54(39), Wis. Stats. (1987-88), provides that the gross receipts from the sale, storage, use, or other consumption of off-highway, heavy mechanical equipment used exclusively or directly in the harvesting or processing of raw timber products in the field by a person in the logging business are exempt from Wisconsin sales and use tax.

Question 1: Are accessories, attachments, fuel, parts, supplies, and/or materials related to heavy logging equipment exempt under sec. 77.54(39), Wis. Stats. (1987-88), also exempt from Wisconsin sales and use tax?

Answer 1: No. Accessories, attachments, fuel, parts, supplies, and/or materials related to such exempt heavy logging equipment are not exempt from Wisconsin sales and use tax as there is no exemption provided in the statutes for such items.

Question 2: Is there Wisconsin sales or use tax on the cost of labor used in repairing exempt heavy logging equipment.

Answer 2: No. Section 77.52(2)(a)10, Wis. Stats. (1987-88), provides that the repair, service, altering, fitting, cleaning, painting, coating, towing, inspecting, or maintaining of items exempt under Chapter 77, Subchapter III, is exempt from Wisconsin sales and use tax. Therefore, because heavy logging equipment is exempt under sec. 77.54(39), Wis. Stats. (1987-88), the charges for labor to repair, service, etc., the equipment are also exempt.

Example 1: Company A has a part replaced on a piece of its exempt heavy logging equipment. Company A pays the repair bill which consists of \$40 for the part and \$60 for labor. The \$40 charge for the part is subject to Wisconsin sales and use tax. The \$60 labor charge is not subject to Wisconsin sales and use tax.

Example 2: Company B has an attachment added to one of its items of exempt heavy logging equipment. The attachment costs \$1,000, the labor to install the attachment is \$500. The cost of the \$1000 attachment is subject to Wisconsin sales and use tax. The labor charge of \$500 is subject to Wisconsin sales and use tax pursuant to sec. 77.51(4)(c)4 because the labor relates to the installation of the taxable attachment.

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### 3. Governmental Unit's Use of Occasional Sale Exemption

Statutes: Section 77.54(7m) and (9a), Wis. Stats. (1987-88)

Background: Section 77.54(7m), Wis. Stats. (1987-88), provides that occasional sales of tangible personal property or services by a neighborhood association, church, civic group, garden club, social club, or "similar nonprofit organization" are exempt from Wisconsin sales or use tax if no professional entertainment is involved, if the organization is not involved in a trade or business, and if the organization is not required to have a Wisconsin seller's permit. (See *Wisconsin Tax Bulletin* 59, pp. 14-16 for a more detailed explanation of the occasional sales exemption.)

Section 77.54(9a), Wis. Stats. (1987-88), provides that sales to the following governmental units are exempt from Wisconsin sales and use tax.

- a. Wisconsin and any agency thereof.
- b. Any county, city, village, town, or school district in Wisconsin.
- c. A county-city hospital established under sec. 66.47, Wis. Stats.
- d. A sewerage commission organized under sec. 144.07(4), Wis. Stats., or a metropolitan sewerage district organized under secs. 66.20 to 66.26 or 66.88 to 66.918, Wis. Stats.

- e. Any other unit of government in Wisconsin or any agency or instrumentality of one or more units of government in Wisconsin.

However, there is no similar provision exempting sales by a Wisconsin or municipal governmental unit.

Question: May a governmental unit specified in a. through e. above exempt its sales from Wisconsin sales or use tax as occasional sales under sec. 77.54(7m), Wis. Stats (1987-88)?

Answer: Yes. A governmental unit will be considered a "similar nonprofit organization" and qualify for the occasional sales exemption, provided all other requirements of sec. 77.54(7m), Wis. Stats. (1987-88), are met.

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### 4. Payment for Personal Use of Automobile Provided by Employer

Statutes: Section 77.51(4)(a), (13)(k) and (14)(intro.) and (j) and 77.58(6), Wis. Stats. (1987-88)

Wis. Adm. Code: Section Tax 11.79(1), September 1984 Register

Facts and Question 1: Company ABC provides each of its salespersons a company automobile which is used for business and personal purposes. If the salesperson uses the automobile for personal purposes, the salesperson must pay ABC Company 24¢ per mile (assume 24¢ per mile is fair rental value) for all personal miles traveled. Are the payments by the salesperson to Company ABC for personal use of a company automobile subject to Wisconsin sales tax?

Answer 1: Yes. The use of the automobile for personal purposes in exchange for payment is considered a lease or rental of a motor vehicle and is subject to Wisconsin sales tax pursuant to sec. 77.51(14)(j), Wis. Stats. (1987-88) and section Tax 11.79(1), Wis. Adm. Code.

Facts and Question 2: Assume the same facts as in Facts and Question 1 except that the salesperson pays only 9¢ per mile for personal miles traveled, even though the fair rental value is 24¢ per mile. Is sales tax due on 9¢ per mile or 24¢ per mile?

Answer 2: The measure of sales tax would be 9¢ per mile unless facts and circumstances indicate that the salesperson is paying some other consideration for personal use of the company automobile in addition to the 9¢ per mile. In that case the measure of sales tax would be greater than 9¢ per mile.

Facts and Question 3: Company XYZ owes Salesperson A back wages of \$1,200. Salesperson A cancels the debt owed to him or

her in exchange for the use of a company automobile for personal purposes. Is there a sales tax liability in this situation.

**Answer 3:** Yes. Although Salesperson A does not pay a fee for the use of the automobile, Salesperson A is cancelling a debt of the employer. Use of the company automobile is subject to sales tax because sec. 77.51(4)(a), Wis. Stats. (1987-88), provides that gross receipts means the rental price of tangible personal property valued in money, whether received in money or otherwise. The cancellation of indebtedness of \$1,200 is the gross receipts subject to sales tax.

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### 5. Photocopies of Medical Records

**Statutes:** Sections 77.51(14)(h) and (L) and 77.52(1) and (2)(a)7, Wis. Stats. (1987-88)

**Wis. Adm. Code:** Sections Tax 11.47(1)(e), September 1977 Register and Tax 11.67, September 1984 Register

**Facts and Question:** Company ABC employs people in Wisconsin hospitals to copy patient records as requested by patients themselves or third parties such as attorneys or insurance companies.

Requests for patient records are normally received by the hospitals and turned over to Company ABC. Company ABC employees open the envelopes, log the patient's name, the requestor, the date, and information requested. The log is then used by Company ABC personnel who go to the hospital's medical records area to obtain the necessary documents. The appropriate documents are photocopied using the hospital's photocopying machine and returned to the medical records area.

Company ABC mails the photocopied documents to the requestor with an invoice for the amount due. The normal charge varies from \$5 to \$15 which includes up to 5 copies. Additional copies are available on a per page basis. All postage is paid by Company ABC. No reimbursement is made to the hospitals for the use of the hospitals' copy machine or paper.

Are these charges by Company ABC subject to Wisconsin sales and use tax?

**Answer:** Yes. The charges by Company ABC are for the sale of photocopies which are subject to Wisconsin sales and use tax under sec. 77.51(14)(h) and (L) and 77.52(1) and (2)(a)7, Wis. Stats. (1987-88).

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## PRIVATE LETTER RULINGS

*"Private letter rulings" are written statements issued to a taxpayer by the department that interpret Wisconsin tax laws to the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the same extent as the requestor, provided the facts are the same as those set forth in the ruling. The number assigned to each ruling is interpreted as follows: The first two digits are the year issued, the next two digits are the week issued, and the last 3 digits are the number in the series of rulings issued that year. "Issued" means when the ruling is available to be published (80 days after being mailed to the requestor). The date following the 7-digit number is the date the ruling was mailed to the requestor. Certain information contained in the ruling that could identify the taxpayer requesting the ruling has been deleted. Wisconsin Publication 111, "How to Get a Private Letter Ruling From the Department of Revenue," contains additional information about private letter rulings.*

W 8916001, February 1, 1989

**Type Tax:** Sales/Use

**Issue:** Occasional Sales Exemption

**Statutes:** Sections 77.51(a) and 77.54(7) and (7m), Wis. Stats. (1987-88)

This letter responds to your request for a private letter ruling regarding whether receipts qualify for the occasional sale exemption from sales tax.

The information provided in your letter states that B was organized to conduct the 1989 event. This event is an amateur competition between teams from various countries throughout the world and is scheduled to take place in 1989. This organization has applied for and received exempt status from the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code. B will be dissolved shortly after the consummation of the event.

All revenues will be related to the holding of the event in 1989, which will consist of an amateur competition between teams representing various countries throughout the world and will be held at Place A. No professional entertainment will be involved in this event other than disclosed below which is not a subject of this ruling request. The following receipts will be received in connection with this event:

- a. Admission tickets will be sold to individuals. In addition, corporations will be solicited to purchase blocks of seats.
- b. B has arranged through the Place A vendor to provide concessions at the tournament (food and beverage). B will receive a commission on these sales. The vendor will be the retailer of these sales and does hold a Wisconsin seller's permit.